

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL**, on February 17, 2003 at 3:14 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Jerry O'Neil, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Brent R. Cromley (D)
Sen. Bob DePratu (R)
Sen. John Esp (R)
Sen. Dan Harrington (D)
Sen. Trudi Schmidt (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Andrea Gustafson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SJ 14, 2/11/2003; SJ 11, 2/11/2003;
SJ 18, 2/13/2003; SB 364, 2/12/2003

Executive Action: SJ 14; SJ 11; SJ 18; SB 364

HEARING ON SJ 14

Sponsor: SEN. AUBYN CURTISS, SD 41, Fortine

Proponents: Rita Windom, Lincoln County Commissioner
Patricia Cohan, St. John's Lutheran Hospital,
Center for Asbestos Related Disease (CARD)
Kerry Beasley, St. John's Lutheran Hospital, CARD
Jeanie Gentry, St. John's Lutheran Hospital
Paul Rumelhart, Libby Area Chamber
Jennifer Bannon, MT Environmental Information
Center
SEN. ROBERT DEPRATU, SD 40, Whitefish
Bonnie Kittleson, South Lincoln County Leadership
Team
Dan Larson, South Lincoln County Leadership Team
Travis Ahner, MT Trial Lawyers Association
Mike McGrath, Attorney General

Opponents: None.

Opening Statement by Sponsor:

SEN. AUBYN CURTISS, SD 41, Fortine, read and submitted her statement. **EXHIBIT(phs35a01)** In addition, she handed out information regarding the Rand Institute Criminal Justice Study, a newspaper article about an asbestos conference focusing on Libby, and a flyer defining asbestos illness and the treatment. **EXHIBIT(phs35a02)**

Proponents' Testimony:

Rita Windom, Lincoln County Commissioner, stated she was in her second term and had lived in Lincoln County since 1967. She gave a brief overview of where things had been and where it needed to go in terms of research and medical issues of asbestos related diseases. She handed in a packet of information that contained several pages of a copy of the public health assessment of Libby's asbestos site. **EXHIBIT(phs35a03)** Three more handouts produced by Agency for Toxic Substances and Disease Registry (ATSDR) were given: one summarizing the preliminary findings of Libby, MT, a computed tomography study **EXHIBIT(phs35a04)**, the second was regarding the asbestos medical testing for the years 2000 and 2001 **EXHIBIT(phs35a05)**, and the last one was the health consultation for Libby **EXHIBIT(phs35a06)**. Ms. Windom said the reports showed a great health need to go on with research. She said that in the years she had lived in Libby she had watched her

friends and neighbors die of asbestosis. She said their medical records did not necessarily say they died of asbestosis because the thing that killed them at the very end was over worked heart, congestive heart failure, kidney failure, and many other things. The death certificate reads they died of asbestosis. In the assessment document, it talked about 7,307 people being tested and 18% of that group, or 1315 individuals have asbestos related disorders. **Ms. Windom** said that was the tip of the iceberg of what was being faced in a global environment today. That product was shipped all over the world. The children who were raised in Libby, including her own, had come into contact with that fiber. The latency period has not arrived for them and she had no idea of the thousands of children that might be affected. In **Ms. Windom's** family, her son and husband were secondary contractors at the W.R. Grace site. She and her husband thought they were being good parents giving their son a chance to work and learn a trade. If they had known then what they knew now, none of them would have been at that site. She said her husband had asbestos related disease and had a scar on his lung. Her 41-year-old son had developed asbestos related symptoms. She said what would happen to her grandchildren in twenty years was unknown. **Ms. Windom** said it was right now that the opportunity had to be taken to grasp the challenge, to do a treatment and research center. The goal was to be able to medicate, or delay or soften the disease for our children and make their living better. A treatment and research center would be a significant key in doing that. She said we all needed to learn from the living because we cannot learn from the dead. The time was now to utilize those people in Libby. A captive population was in Libby, unfortunately, many were dying. The clinical results need to go over into research. An infrastructure was already started in Libby and it asked for \$750,000 from the federal government to do the feasibility study. It was important and she wanted it done right the first time. She said there could not be any more mistakes with people's lives. The people wanted to accept the responsibility for working for a brighter future for people with asbestos related disease.

Patricia Cohan, St. John's Lutheran Hospital, Center for Asbestos Related Disease (CARD), read and submitted her written testimony. **EXHIBIT (phs35a07)**

Kerry Beasley, St. John's Lutheran Hospital, CARD, read and submitted her written testimony. **EXHIBIT (phs35a08)**

Jeanie Gentry, St. John's Lutheran Hospital, read and submitted her written testimony. **EXHIBIT (phs35a09)**

{Tape: 1; Side: A}

Paul Rumelhart, Libby Area Chamber, asked on behalf of the chamber, for support in their efforts requesting federal funding to do research on asbestos disease in an asbestos disease research setting. **Mr. Rumelhart** said they were not asking the state for money, only for Libby to be where the research and medical center be.

Jennifer Bannon, MT Environmental Information Center, urged the committee to support SJ 14.

SEN. ROBERT DEPRATU, SD 40, Whitefish, said asbestos problems expanded to Rexford. He was raised 56 miles upstream from Libby. His father was one of the first people to go to work for J. Nielsen in 1950, when they moved to Rexford. Employees of J. Nielsen had easy access to the asbestos and were told the asbestos was good for many things. His father remodeled their home, adding on three rooms and a bathroom. People who worked for J. Nielsen, had easy access to the asbestos, and could bring home it home by the pickup load and in bags. **SEN. DEPRATU** said that his father brought it home both ways, insulating their entire home with it. They laid it in their attic on their hands and knees. The dust would be so thick they could not see the attic door. They lived with it. His dad was diagnosed in 1990 with asbestos related disease and died in 1994, which was before the real problem became known in Libby. He said that he and his family know now that was where it came from. His sister, who had spent her adult life in Alabama, would be up for the screening for asbestos disease at the end of March because she had developed lung problems that the doctors had not identified. She retired at 60 years old and did not know what she had to look forward to. **SEN. DEPRATU** urged do pass on SJ 14.

Bonnie Kittleson, South Lincoln County Leadership Team, said Libby, MT had the largest population identified with asbestosis. A short time ago, her dad had been diagnosed through the screening process in Libby, as having asbestosis. It was a terrible shock to her family. Her dad was not from Montana, but from Washington where he worked for a vermiculite company. Her uncle had asbestosis, who was from Washington as well. She agreed this was a tip of the iceberg and that there was going to be many more cases coming forward. It made sense to have the center in Libby with so many there in various stages of the affliction.

Dan Larson, South Lincoln County Leadership Team, said he knew it was going to take many "fish" to take care of those who are already sick. That was something they as a town had to do, but

they also wanted to learn "how" to fish. He thought some real benefits of research and study around the diseases related to tremolite asbestos, would be a commercialization of some of those things. It would provide them the ability to stand on their own feet and gain the ability to not be funded by state or federal government processes ten years down the road, so that they can do it themselves. **Mr. Larson** said they envisioned seeing a center in Libby that can deal with tremolite asbestos and diseases related to that, as standing on its own in ten years. Using Libby as the sight was important. The population was there, not only diseased and in the graveyard, but those walking around. He said that symbolically, as a town, Libby did not want to be fed by the state or the federal government. They wanted to be able to feed themselves. The best money spent could be in research that could be commercialized or brought to a point where it could carry its own weight. He pointed out that Butte had done this successfully.

Travis Ahner, MT Trial Lawyers Association, speaking for the association, wanted to add their support to SJ14 and to those who testified in favor of it.

Mike McGrath, Attorney General of the State of Montana, said his department had been active in many issues relating to Libby and the situation that existed there. He said the department was active in the bankruptcy proceeding against W.R. Grace. W.R. Grace was a company that operated the mine and they had declared bankruptcy and walked away from Libby and the residents of Lincoln County. He said his department was in the process of proceeding with potential future health claims against W.R. Grace and the bankruptcy. Prospects were not good, but they actively pursued that. He said there was not any other source of revenue at the time for the project. It was a unique situation. It was the only mine, in the entire country and perhaps the entire world, so Libby was very much an appropriate place for research to take place.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. DAN HARRINGTON, SD 19, Butte, asked what was going on with W.R. Grace's bankruptcy. **Mr. McGrath** said W.R. Grace was a huge company. In the bankruptcy proceeding, there have been allegations by Montana and other states, that W.R. Grace spun off several subsidiary companies that had substantial assets. They did that over a few years, before filing bankruptcy. They made

those companies, stand-alone companies and then left. What was left of the mining operation was a shell. There were other assets, but the assets far exceeded their potential liability.

Mr. McGrath said the department was not carrying the weight in this, but was monitoring it very closely. There was a charge of fraudulence in the case being brought up, challenging the bankruptcy, saying W.R. Grace had spun the assets in the subsidiary companies and those assets should be brought back into the corporation and then available for distribution of the bankruptcy process. **Mr. McGrath** said it was in the courts. The bankruptcy proceeding was in Delaware. The fraudulence litigation was in Massachusetts, but there was litigation all over the country.

SEN. HARRINGTON asked how long the litigation might go. **Mr. McGrath** said he could guarantee it would go on for years. Some initial rulings had been made in the case that made him optimistic because there would be some of those assets of those corporations back into W.R. Grace.

SEN. EMILY STONINGTON, SD 15, Bozeman, asked if this bill was the first step, or if other steps had been taken to get the federal government to move in this direction. **SEN. CURTISS** said this was the first step, specifically geared for this.

SEN. ESP asked what the difference was between generic and tremolite asbestos. **Ms. Cohan** said tremolite asbestos was rock designated as asbestos and rather than break it up into granules or sand, it went into long thin fibers. It is flexible, which was why it made a wonderful insulator against the cold. Generic was more like granules.

Closing by Sponsor:

SEN. AUBYN CURTISS, SD 41, Fortine, read and submitted her written closing statement. **EXHIBIT (phs35a10)**

SEN. JOHN BOHLINGER, SD 7, Billings, said he sensed a great deal of support from the committee and asked if moving it forward would be appropriate in taking executive action in the presence of the proponents. He wanted to send them home with the knowledge that the committee was supportive of their efforts.

EXECUTIVE ACTION ON SJ 14

Motion/Vote: **SEN. SCHMIDT** moved that **SJ 14 DO PASS**. Motion carried 8-0.

HEARING ON SJ 11

Sponsor: SEN. TRUDI SCHMIDT, SD 21, Great Falls

Proponents: Mike McGrath, Attorney General
Randy Gray, City of Great Falls
Ken Neill, District Court Judge, Great Falls
Dan Nauts, M.D., Benefis Behavioral Health
Don Hargrove, Montana Addiction Service Providers,
Montana Addition Service Providers (MASP)
Jean Branscom, Governor's Office
SEN. DUANE GRIMES, SD 20, Clancy
Roland Mena, Department of Public Health and Human
Services (DPHHS)

Opponents: None.

Opening Statement by Sponsor:

SEN. TRUDI SCHMIDT, SD 21, Great Falls, said she brought a resolution that was the work of **Mayor Randy Gray** of Great Falls. He recognized the tremendous impact methamphetamine abuse has made in the Golden Triangle and Great Falls areas, and in other communities. The mayor brought together a group of people who talked about what could be done to address methamphetamine abuse. As a result, **Mayor Gray** and **Judge Neill**, a district judge in Great Falls, worked on the resolution with a drafter and they came up with SJ 11. There were eight "WHERE AS" and she wanted to call attention to a couple of them. The second one addressed methamphetamine abuse. SEN. SCHMIDT read, "WHEREAS, methamphetamine abuse exemplifies the many issues involved, including extreme addiction, the dangers to people created by the production of drugs, such as ingredients and residues and the broad range of public health issues, ranging from child endangerment and abandonment to shared needles, self-mutilation, and dental loss." She said the other "WHEREAS" talked about other addictions of other drugs. The last one talked about the price tag and the consequences of not doing prevention and early intervention efforts in crime, health, and welfare of the workforce, and abuse, neglect, and dependence problems for children. She said SEN. GRIMES had been the chair of the governor's and attorney general's Alcohol, Tobacco, & Other Drug Control Policy Task Force and they addressed some issues. This resolution was a result of that task force. She would like to see the legislative council designate an appropriate interim committee or direct sufficient staff resources to review the

progress and proposals made by the governor and the attorney general's Alcohol, Tobacco, & Other Drug Control Policy Task Force. Then continue to identify the issues and to develop proposals for a coordinated cooperative effort by federal, state, and local levels of government and the private sector to carry out early intervention efforts. **SEN. SCHMIDT** said she thought SJ 11 was significant in addressing the problem.

{Tape: 1; Side: B}

Proponents' Testimony:

Mike McGrath, Attorney General, said he had been involved in the law enforcement community for 25 years. He said that if he had learned anything in that period, he learned that law enforcement could not arrest them all. To deal with the methamphetamine issue was going to take a multitude of efforts, including prevention, early intervention, and much education. The comprehensive blueprint for the future was issued by the Alcohol, Tobacco, & Other Drug Control Policy Task Force chaired by **SEN. GRIMES** and they did an excellent job. The task force emphasized that education, prevention, and treatment-related issues must be dealt with and that law enforcement cannot do it all. This was an excellent start. **Mr. McGrath** said the ball cannot be dropped. It could not be a study that was put on the shelf, like so many studies had been done over the years. There had to be followup because this issue was not going to go away. It was going to continue to plague our communities. He said one thing he hoped the study would do would be to look to Wyoming and the kinds of things they were doing there. Wyoming had adopted the most comprehensive anti-drug plan in the entire United States. They had committed to spend \$50 per resident, for a total of 50 million dollars to address the methamphetamine abuse issue. There were many key elements. One, was Wyoming intended to develop and fund drug courts, invest in outpatient and residential treatment programs, and encouraged community-based coalitions and community-based solutions. They were dealing with several DUI related issues that Montana's legislature was doing as well. **Mr. McGrath** said there was much to do in this area. It was a very serious problem and he hoped there would be support for the resolution.

Randy Gray, City of Great Falls, said he had been the city commissioner of Great Falls for seven years. Five years ago, he did not think anyone had heard the word methamphetamine. In the last four years, the problem had mushroomed. In the year 1999 and the year 2000, the Great Falls police department cleaned up two meth labs, in each of those two years. In the year 2001, they had cleaned up 15. In 2002, they had cleaned up 29,

doubling each time. He said it was not just the clean up that was the problem. It was horrible and toxic, not only when it was ingested, but when it was touched by those who may not even be using it. Also, it was exposing the police department personnel to situations of risking their lives to clean up these labs. Each time there was an event, the fire department would have to go along. They would have to rinse off the residue from the people who were cleaning this up. This was rapidly draining the Great Falls general fund budget. Each city in Montana has a general fund that pays their police and fire department. **Mr. Gray** said there were 54 assaults in the year 2001. In the year 2002, there were 97 assaults. These were assaults on the officers investigating the crimes. This correlated with the meth labs doubling each year. He said the people who used meth were totally irrational. They had supernatural powers in their own minds. It was a dangerous situation when sending an officer into that kind of situation. The officers ended up facing the unpredictable, in terms of officer assault. He said those were just two simple statistics that brought home to him, as mayor, the seriousness of the situation. The best people were being put in harm's way. The situation that had developed in Great Falls was a duplicate of the situation that had developed all over Montana. **Mr. Gray** said this was not just in our urban communities but in our rural communities. This was particularly true on the Indian reservations. He said **Judge Neill** would probably tell more stories. He said the team consisted of all four of the District Court judges, both Justices of the Peace, the municipal court judge, the sheriff, the police chief, many Representatives and Senators, and people from the medical community, including Dr. Nauts, all from Cascade County. **Mr. Gray** said the most compelling story he heard while putting together the evaluations of the problem was from Judge McKittrick. He had sentenced a 23-year-old woman in his court for possession of methamphetamine. She was a mother the entire time she was on methamphetamine. Because of the heavy metals used in the cooking process, the temperature exudes those metals through various tissues in the process of methamphetamine. It was not only externally on your skin, but it was internally in the lungs, kidneys, affecting the brain. The body has had to exude those metals. A woman already having given birth to one child, came before Judge McKittrick. By her high school photo album, she had been a stunning looking woman. When a person was on meth, he or she had irrational behavior and because of this, he or she started picking away at those sores. So from head to toe, the woman was one big scab. Not only that, she had lost all her teeth. **Mr. Gray** said that spoke to him in spades what the problem was. He thought the solution came in several different forms. He had come across a publication from the US Department of Justice describing the Wyoming Methamphetamine Initiative. The team had

started looking at that as maybe a model for Montana. The team did several "think sessions" and came up with several conclusions: (1) meth was overwhelmingly addictive, (2) meth ingredients, the production and the residues were highly dangerous, (3) meth consumption was spreading communicable disease and was a public health issue. People usually shared needles, (4) education was an important tool, not just law enforcement, (5) treatment was a necessary and primary component. Treatment must be beyond the 28 day treatment programs for the typical alcohol treatment. Treatment needed to be 2-3 years of ongoing treatment, (6) several dependencies overlapped in the same person. These various co-dependencies needed to be treated besides the underlying methamphetamine problem, (7) affordability and availability of residential treatment programs in Montana as an effective program needed to be looked at, (8) this problem was statewide. It was not just in Great Falls or urban areas, but in the rural areas. The more successful Cascade county was, the more it pushed the problem to other areas. What needed to happen was a holistic approach for treating not only methamphetamine, but all addictive behaviors. He said this was exactly what **SEN. SCHMIDT**'s bill did. The price tag needed to be looked at for doing this because these were expensive solutions. There was not a quick fix for this. This needed to be studied over a period, which was what SJ 11 did. The task force's report cites a California study stating that for every dollar spent in treatment, \$7.14 was saved in future costs to the tax payers. He insisted that money needed to be spent to bring the problem under control. He said the fact was that as a state, we could afford to be aggressive in treating these problems. He asked for favorable consideration in this resolution.

Ken Neill, District Court Judge, Great Falls, said from the judges standpoint, they were looking for sentencing options and sentencing options that had a reasonable prospect of success in curtailing the criminal conduct of the individuals coming before the courts. About 90% of the criminal defendants who had committed felonies that appear in his court, the root of those crimes had been drugs and/or alcohol. He said this was true despite whether it was a directly drug related offense or if it was an assault, a burglary, or any other type of felony. The governor and attorney general's task force study said 89% of the inmates in the state prison system had long term substance abuse problems. **Judge Neill** said when someone was initially sentenced, he was being sentenced for the crime he committed. The fact that he was under the influence of drugs or alcohol was not a factor. The real burden was when they come back, after being out of prison for a period. They came back because they had violated their probation and served out the suspended sentence. The Cascade county opened more than 900 criminal felony files a year,

approximately 600 new cases, and 300 of them were revocations. The task force study said 50% of the inmates were there on revocations of their probation or parole. Most of them had drug and alcohol related conditions. In that list of violations of their probation, the drug and alcohol was a violation and was one condition of parole. They tested positive, or caught with meth. They committed an offense. Other options had been tried. At some point they had been in pre-release, and had tried what was available, but had no choice, but to send them to prison. Sometimes it did not seem like the best option. When he sentenced someone for a year in prison, it represented a \$22,000 appropriation of state funds, taxpayer funds. If it were a juvenile going to Riverside, it was an \$83,000 appropriation.

Judge Neill was pleased that the mayor of Great Falls was charging forward trying to tackle the problem. He said it was time to look at comprehensive coordinated legislative policy to learn the level and heighten commitment that was to be made in that area. He stated three points for SJ 11. The first was that the existence of the problem had been established as far as the cost to society. Second, the programs were stretched to the limit and were sometimes not available for everyone or in a timely way. There were many on a waiting list. Furthermore, it was normally a 28-day program and that was not long enough. The third point was the resolution. It would keep the task force moving forward. He hoped that in the next 18 month to two-year period that there would be a comprehensive body of legislation and policy developed, coordinated and ready to be introduced at the next legislative session. He urged a DO PASS for SJ 11.

Dan Nauts, M.D., Benefis Behavioral Health, stated he was the medical director of Benefis Behavior Health in Great Falls. He specialized in addiction medicine and had treated patients with a variety of substance abuse disorders for the last 16 years. He did not think any substance had brought the deficiencies in Benefis treatment system like methamphetamine had. The severity of the addiction was intense. The medical and psychiatric complications could mimic any disease process. The severe methamphetamine addict when presented for care was unable to attempt a one word attention span. Their logic was gone, they might be psychotic, they might be violent, homicidal, and they might be suicidal. When that resulted, they could not learn anything for two to three weeks. One problem in treatment was the intensive treatment was usually done up front, when they were least able to gain from it. As they started gaining from treatment, they were often being discharged from the program. They did well if they had long term psycho-social support. The successful cases were where the services had been integrated with the criminal justice system. **Dr. Nauts** said Benefis had strong provisions for the person who was in the pre-release center. There was a lot of monitoring and surveillance. He said it took

a lot of energy, many resources, and a long time. Montana was very short on transitional living environments. If patterns of use were studied historically, what would be seen in periods of stimulant use, like amphetamine and cocaine; then on the other side of that, the emergence of opium and heroin. That emergence was being seen in Montana, primarily in the illicit use of oxycotin. This was dramatic. It would be in combination with methamphetamine for several years. **Dr. Nauts** said we would face the same problems with that substance because Montana did not have the long term care resources to support this population. These were huge resource eaters in the healthcare setting. He had recently moved a woman to outpatient services during her inpatient stay that was complicated by bacterial endo carditis, which was an infection on the heart valve. She developed multiple abscesses in her lung, which had ruptured into the plural space, which was the space between the lung and the chest wall, and required draining. Six weeks of that cost \$200,000. He said it was a devastating problem both socially and economically. He wanted to see this process continue, initiated by the Governor's task force, to look at different solutions out of the box, that integrated the services already in place. **Dr. Nauts** thought it was possible without increasing resources. He thought that was shown on a small scale in Great Falls, especially with the excellent integration services between Great Falls' programs and the Criminal Justice Department and would like the opportunity to expand that in the future.

{Tape: 2; Side: A}

Don Hargrove, Montana Addiction Services Program, believed the study would carry on the excellent work provided by the Governor's task force over the last interim. He said MASP supported this and asked for the resolution to be passed, and to keep it a high priority in the legislature, so that it would happen.

Jean Branscom, Governor's Office, read and submitted her written testimony. **EXHIBIT**(phs35a11)

SEN. DUANE GRIMES, SD 20, Clancy, said he had learned a great deal working with the task force. He said our communities were starting to unravel. Public officials at all levels who had seen the crisis were in panic. He said he had never seen anything like the methamphetamine issue before. **SEN. GRIMES** described it as an incredible foreboding going into this century and that we needed to be involved. The task force did not take up any issue regarding where to go after claims were presented, other than what would be done in the legislature. Those proposals were now before the legislature. He said this resolution was a good

follow-up from the task force to continue determining solutions. He emphasized page 2, lines 11-14, where the interaction was talked about between the interim committee and local officials. He was on the interim committee. He said that interaction did happen on the task force, and that some communities were very concerned and organized, Great Falls being one of them. They were exemplary in the way both came together and addressed the issues. What the task force dealt with off and on was how the impetus would be transferred to local communities. **SEN. GRIMES** said that there might not be one large task force again, but more local task forces that would use the interim committee for coordinating interaction and to bring their proposals over to the next session. He said that was where the work was going to be effective. He complimented the Governor and the Attorney General for the foresight for putting the council together and thanked the Board of Crime Control for enabling it through funding. It now lay with the elected representatives, at a local level to come out of the normal partisan, and fiscally conservative viewpoint and understand what is at stake here. They need to understand that if able to intervene, there would be savings in dollars seen. These were tough decisions to be made. There would be political heat that came with proposals being brought forward, but the legislature could and would do that.

Mike Barrett, Self, spoke about the forces he thought might influence health care.

Roland Mena, Department of Public Health and Human Services, said he had the opportunity to be a member of the drug task force. He said he had heard recent testimony from two youth, ages 18 and 20. They said their methamphetamine use began with the use of tobacco and alcohol. He said that knowing this, there needed to be a comprehensive approach. The department's data for admission to the state approved programs show more than 75% of their admissions report their abuse started under the age of 16.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. JOHN ESP, SD 13, Big Timber, asked how DPHHS was addressing the issue of kids abusing drugs and alcohol, and how money was distributed for those issues. **Mr. Mena** said that currently the funding picture of this bill was that there were three funds. One is the alcohol tax, of which about a million dollars went back into the communities to state approved programs. A second source was for treatment for both abuse and dependency. That was

the Medicaid match that comes from the alcohol tax. The third one, which was the most substantial amount of money coming that was a federal substance abuse prevention treatment block grant. It is about 6.4 million dollars, of which 20% of that money must be spent on prevention efforts. The department did have contracts with the state approved programs throughout the state. Much work was done in community coalitions, education, media literacy, and the funding of what were called best practices in prevention. The second money, the federal money that comes in was for the community incentive grant, which was received in 1998. There were 11 communities, two of which were tribal communities, that received that money. The department recently submitted for continuation of that grant. He hoped the department would hear about it by summer time. There was a fair amount of money spent on the local level in communities to do prevention.

SEN. JOHN ESP asked if the appropriation was a yearly grant. **Mr. Mena** said the federal SAP block grant was a yearly for which allocation applied.

SEN. JOHN ESP asked how much covered all those categories in a year. **Mr. Mena** said about 1.2 million dollars.

SEN. JOHN ESP asked for clarification on why one patient would cost more than another. **Dr. Nauts** said it was a common problem. He referred to the case he mentioned in earlier testimony. It would be the third case in the last six months at Benefis Healthcare, where the total charges were more than \$200,000, due to the complications of the drug use. He could not speak for other hospitals.

SEN. ESP asked about the cases that where the costs exceed \$50,000 or \$100,000, if the healthcare facility had to write off a lot of those costs that were not covered by insurance. **Dr. Nauts** said most those charges were written off. Occasionally, they could get Medicaid payment on some of those cases.

SEN. BOHLINGER said that with the understanding the committee had been given on how methamphetamine use had taken a serious grip on young Montanans and how it had destroyed their lives, why not move the bill forward. He wanted **SEN. SCHMIDT** to close and move the bill forward quickly so that it could be heard on the Senate floor quickly.

SEN. JERRY O'NEIL, SD 42, Columbia Falls, asked **Mr. Neil** about his testimony of how 90% criminal defendants where drugs and alcohol were involved and 89% of state inmates have long term substance abuse problems. He had heard previously to this that

90-95% of prisoners in prison were from single parent families. He wanted to know if **Mr. Neil** had any knowledge of that. **Mr. Neil** did not know. He said there was no question that the same people coming through the juvenile system graduated into the adult system. There was no question the huge role it played with people using drugs and alcohol in a community offense. He said he could not give a statistic.

SEN. JERRY O'NEIL asked Mr. McGrath if he had any statistics on the number of prison inmates coming from single parent families. **Mr. McGrath** did not.

Closing by Sponsor:

SEN. TRUDI SCHMIDT said some compelling testimony had been heard. It was an incredible problem and it was in the committee members hands to move the legislation.

{Tape: 2; Side: B}

HEARING ON SJ 18

Sponsor: **SEN. DAN HARRINGTON, SD 19, Butte**

Proponents: None.

Opponents: None.

Opening Statement by Sponsor:

SEN. DAN HARRINGTON, SD 19, Butte, said the resolution asked that the Department of Public Health and Human Services apply for a Medicaid waiver which they had already done. The department would like the legislature to move forward with more flexibility than allowed in Medicaid rules for programs that would grant family members to provide assistance to members of families who were elderly or disabled or both. In other words, these were called personal care givers. Across the country this had become a new way in trying to address some problems. It was a cost savings as far as Medicaid funds are concerned. Many states had already applied for these exceptions and been granted them. Many states that have set the programs up that allow a husband, members of the family, or neighbors to be hired to come in to be a personal care giver to the elderly or disabled. He said many of these people would like to stay in their own homes. They did not want to be put into institutions. A member of the family would have to work to have money coming into the home. These people would stay home and be taken care of if there was some income provided. It had become very successful in other states. Montana was asked two years ago what direction they were taking in this matter.

There had been 47 states that answered back saying they had now moved in this direction of providing this care. The DPHHS had said that if this piece of legislation would be passed and they could get the waiver by the federal government as far as this Medicaid ruling was concerned, that they could move forward with this. **SEN. HARRINGTON** said that after attending the conferences regarding this issue, he felt it was the way of the future. It was for the senior citizens to help them stay in their homes and keep them happy. Many of the elderly had to go into rest homes or had care that was not quite as adequate as it should have been. He said it was his understanding that if more people would be able to go in this direction, it would save money and it would be a wonderful experience for the senior citizens and disabled people. They liked the independence of being themselves. As far as setting up training in the state, many states had different methods. Many are trained by the family themselves of what they wanted and how they wanted to do it. These people would be paid in different ways. The person who was being attended would be given the money and then in turn pay the caregiver. The state could also pay the person who was providing the services. **SEN. HARRINGTON** said it was a simple resolution but thought it to be an important resolution. In this day and age, there was going to be cost cutting in Medicaid and cutbacks in programs and he thought it important to recognize that there was the ability to do this.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony:

Cecilia Cowie, DPHHS, Senior and Long Term Care Division, said the SLTC provided majority of programs that allowed the elderly or the disabled to remain in the community. She said she was there to answer any questions they might have.

Questions from Committee Members and Responses:

SEN. DUANE GRIMES, SD 20, Clancy, said **Mr. Hunter** oversaw the office created to look for Medicaid dollars. **SEN. GRIMES** asked if **Mr. Hunter** had broached the subject. **Ms. Cowie** said that as far as she knew, he had not. She said there was not any new funding that her division would be getting or any refinancing of any sort. They currently provided the service and personal care for people in their homes. What was not allowed right now was the parent of a minor child or spouse to be reimbursed for providing them service. What was needed was the waiver from the government to do that.

SEN. BRENT CROMLEY, SD 9, Billings, asked **SEN. HARRINGTON** how strongly he felt about Silverbow being the only county to pilot the program. **SEN. HARRINGTON** said it was put in there because he was carrying the resolution and worked with the people in Butte Silverbow. He said he should have asked those people to come because that would be one way to talk to some who have worked with the state. He said he just wanted to see the program work. If it were wanted to be put in Billings that was fine with him. He thought it important to go forward and that was just the town put in because he had been working on it and had worked with the people in Butte Silverbow who were interested in this. If the committee wanted to amend that, it would be fine. He just wanted to see it moved forward.

SEN. JERRY O'NEIL asked if the bill was put through, would the money for family members to provide care, jeopardize the federal funding if it were used to hire their neighbor? **Ms. Cowie** said no. The neighbor or family neighbor could be used. Right now they have the ability to hire the neighbor, but have to go through an agency. The family does not receive the cash. It would jeopardize their Medicaid or Social Security benefits. This was why the waiver was needed from the federal government to allow the person with the disability or the elderly person to receive the money without jeopardizing their benefits. Then they could use the money to pay a family member, neighbor, or whomever they choose.

SEN. O'NEIL asked if the bill needed to be amended to do that. **Ms. Cowie** said it could be done if the committee chose. They would be excluded if the amendment were not done.

Closing by Sponsor:

SEN. DAN HARRINGTON said it was a resolution. It was asking for what in some ways was being done now. The reason the waiver was being asked for was to enlarge the program. He said Montana was moving in the direction of some major cuts and this resolution would enable money to be saved and allow the disabled and the elderly to stay within their homes.

HEARING ON SB 364

Sponsor: **SEN. MIKE COONEY, SD 26, Helena**

Proponents: **Mike McGrath, Attorney General**
Sara Lipscomb, Montana Council for Families
Phyllis MacMillan, Helena
Bill Smith, Lolo
Jean Branscomb, Governor's Office

Opponents: None.

Opening Statement by Sponsor:

SEN. MIKE COONEY, SD 26, Helena, said the meat of this bill was on Page 2. It was in the underlined section. What was being attempted was to have those who were caught manufacturing or distributing dangerous drugs, such as methamphetamine, where children were in the vicinity, subject to the child endangerment laws. **SEN. COONEY** said it was a known fact that methamphetamine use and production was growing. It was a terrible thing Montanans were facing. It was occurring around children who were the true victims of this situation. The dangers were incredible.

Proponents' Testimony:

Mike McGrath, Attorney General, said that what SB 364 did, was addressed the situation of drug endangered children. These would be children of a drug-addicted parent who manufactured, distributed and possessed methamphetamine. Training and other things were being done for the law enforcement personnel on how to deal with drug endangered children. Law enforcement could not do it alone and could not arrest everybody. **Mr. McGrath** said that what the bill would do is change the child and abuse neglect statutes. It was not a criminal provision. It was not a criminal law. It dealt with child abuse and neglect concerning manufacturing and distribution of drugs. He thought it a very good idea because it accentuated what was happening in our communities. That was the incredible explosion in the use of methamphetamine that was having a significant impact at many levels, not just law enforcement.

Sara Lipscomb, Montana Council for Families, read and submitted her written testimony **EXHIBIT (phs35a12)** and submitted written testimony for Mary Gilluly, the Executive Director of The Family Tree Center, Billings Council to Prevent Child Abuse. **EXHIBIT (phs35a13)**

Phyllis MacMillan, Helena, handed out an article from FBI Enforcement Bulletin **EXHIBIT (phs35a14)** and a video by Sue Webber-Brown, called Drug Endangered Children. **EXHIBIT (phs35a15)** She said her interest in this became a passion last October when a woman came to Montana. The woman was a narcotics officer out of California, who started the Drug Endangered Program in California in 1991. **Ms. Macmillan** said that when this woman started busting the labs, she was seeing the horrific conditions children were living in. She said Sue Edgar-Brown did the presentation seen on a video, and each committee member was given a copy. She said

that if the committee did not have any idea that children being around drugs was child abuse and she encouraged each member to take the video home and watch it. This was not a problem law enforcement, social workers, and treatment people could take care of. It was going to take a community to come together, where all skills were put together to impact it. She shared an example of a house that Sue raided where a four-month-old baby died before law enforcement could get there. The parents laid pacifiers in the same ash tray where they had their meth pipe laying. She said the meth was that toxic. The baby was taken to the hospital having convulsions. The baby was in a coma for four days and then died. **Ms. Macmillan** shared another story of a mother in California who had been charged with murder. She was nursing a four-month-old baby and using meth. The baby died. One meth lab, that Sue Edgar-Brown talked about in her video, was a woman and her boyfriend cooking meth. They were wearing masks to protect themselves from the toxic fumes. They had on industrial strength rubber gloves that went up to their elbows. Children were in there with them. A baby was in a diaper crawling around on the floor. They offered no protection to their kids. **Ms. Macmillan** said it was not that these parents did not love their kids. It was because they had lost any ability to care for them. The last story that she said haunted her was a recovering meth addict, a mother. The mother would tie her 18-month-old baby in a high chair for three days at a time, while she was on a binge. The child received no food, no water, no diaper change. The baby nearly died. She said this was common. This was a typical meth lab. People had no idea how toxic meth was. She referred to scenes on television where law enforcement and firefighters all came in with suits on to protect themselves when doing a clean up. She asked to imagine a baby that had lived in the meth lab environment for two years crawling around on those floors. She said she had never thought about the collateral damage, the children in there, until now. Teachers had the opportunity to see some of the first signs in children. As communities came together, they would be able to impact it. Her hope was not to fill the prisons and put more kids into foster care. It was treatment services. **Ms. Macmillan** said if we did not intervene in these young lives, we would have the next generation coming. The most important thing she felt she could do was to distribute the video tapes. Half of it was a slide demonstration, which was painful to look at, to see what those meth homes look like, to see what the children in them look like. The children who were beaten to death are not in there. Meth users tended to be very violent and sexually aggressive. She said children were in those environments. There was one case where there were kids 10 and 12 years old who had no clothes. The kids could not remember when the last time they had been out of the house and had clothes. The issue was a tremendous drain on our resources. She

encouraged the committee members again to take the video home and watch it. She said this bill was necessary for law enforcement, for social workers, and teachers. Passage of this bill would save some children's lives.

Bill Smith, Lolo, read and submitted her written testimony.

EXHIBIT (phs35a16)

{Tape: 3; Side: A}

Jean Branscomb, Governor's Office, read and submitted her written testimony. **EXHIBIT** (phs35a17)

Opponents' Testimony: None.

Informational Testimony:

Shirley Brown, DPHHS, Child and Family Services, said she was there as an informational witness because she thought the committee might be interested to know how Child and Family Services dealt with calls about neglect when they get them currently. She said they did become involved because they do get calls about the presence of meth labs and the presence of children in them. If the call did not come from law enforcement, they automatically call law enforcement. Most of the calls did come from law enforcement. Law enforcement took the lead in responding. After the call from them, the social worker usually met the officer other than at the site where the lab is. Sometimes the social worker would meet the law enforcement officer at the lab, but they did not enter. Law enforcement contacted the social worker and let her know if entering was safe. The social worker then generally took the child to the emergency room. No belongings could go with the child because of how toxic it might be. When the children went to the emergency room, they were given a shower and clothes were provided by the social worker. The children needed a medical exam. Generally, one exam included was a drug test to detect whether there was blood contamination from the exposure to the toxins of the harmful chemicals. CFS became involved in these cases, and generally that was done when the law was present. When CFS got a call and provided services to a child, CFS substantiated either the physical neglect or exposure to unreasonable risk. The process CFS follows was generally consistent with the Memorandum of Understanding that was had with the Department of Justice, the Board of Crime Control Executable Acts Summons. This Memorandum of Understanding was between the Board of Crime Control, seven multi-jurisdictional drug task forces, the state wide drug task force, the Department of Environmental Quality, and the DPHHS, CFS Division. The procedure according to Montana law and local

protocol was that social services may include providing emergency protective services, placement with a non-custodial parent not involved with the drug or other action that may be appropriate given the circumstances. The social worker then ensured that medical testing, examination, or other necessary healthcare response needed, because of the toxicity, would be undertaken. The issue regarding methamphetamine and the labs related to the proper medical response, contamination issues, decontamination procedures, and the impact on children. What happened in some areas, some emergency rooms were well versed and knowledgeable in how to respond to children who had been contaminated. Some had not as much expertise in the area. The same applied to law enforcement. Some law enforcement agencies were well trained in the decontamination procedures and some were not. **Ms. Brown** said that the fiscal note had little impact on the general fund. The reason was that the department did not see an increase in their work load because they were always providing and responding to these services. What the bill did was provide more clarity in how the definition of abuse and neglect was affected whether it was the production or distribution of the drugs.

Mike Barrett, Self, gave his thought on drugs and the universe.

Questions from Committee Members and Responses:

SEN. JOHN BOHLINGER, SD 7, Billings, asked if the present laws that deal with child abuse and neglect were sufficiently strong. Did they provide enough punishment for someone, such as a parent, who would expose their child to these sorts of risks and was it a deterrent. **Mr. McGrath** said that was difficult to answer. He said on the criminal side of things there were laws to deal with the situation, in addition to the drug laws. Criminal endangerment was a felony, punishable up to 20 years in prison. Recently a couple had duct-taped their children to their beds. The couple was charged with criminal endangerment. That statute was adequate. The county attorneys lobbied that bill through several sessions ago when there was the situation where people were tampering with over-the-counter drugs. Criminal endangerment works very well, as do all the other assaults. On the civil side, this bill amended the current statute to include this kind of behavior in the child abuse and neglect laws. It served a purpose in that it emphasized the community did not find this behavior acceptable. He said it was not deterrent enough. **Mr. McGrath** said this kind of behavior was not going to be deterred. Early intervention and prevention issue was the key. Once they got too far gone, he did not know. The incredible addictive nature of meth was amazing and it made people do some incredible things.

SEN. DUANE GRIMES, SD 20, Clancy, had looked at the different classes of drugs in the Montana Code Annotated, such as Class I through Class V. He asked if Class V should be included, which had low potential for abuse. He wanted to know if it were too broad in the classification of drugs included because of judicial expression. **Mr. McGrath** did not think so. He had not heard that there had been a problem from law enforcement or the prosecution side concerning the way those statutes were written. He did not think there was a problem with the way they were now.

SEN. DUANE GRIMES said he was very supportive of the bill. He wanted to make sure there were not any technical problems. **SEN. GRIMES** clarified that the child could be removed and parental rights could be permanently terminated because of things that could endanger the child. He wanted to know if the presence of marijuana, which he thought may be a Class III drug, was what they really wanted to include. He said he did not know and did not have any experience with it. **Mr. McGrath** said he had wondered about that also. The way he understood the statute to read was that it dealt with the criminal production. If there was a major growth operation, as far as he was concerned, it did apply. There may not be the toxic chemicals, but many of the same issues concerning abuse and neglect.

SEN. DUANE GRIMES asked for clarification saying the elements associated with the manufacturing and the manufacturer then, would be a way to argue it. The person was dealing in elements that would be dangerous to the child.

{Tape: 3; Side: B}

SEN. DUANE GRIMES asked if **Ms. Lipscomb** could answer the same question. **Ms. Lipscomb** said regarding the marijuana exemption, the reality was that SB 364 does not require the children be removed from the home. A substantiation of child abuse and neglect required a treatment plan. It did not require that a child be removed. That was one option within a treatment plan. It is not mandatory. There was not mandatory termination of parental rights based on any of the definitions of child abuse and neglect. That was sometimes a misconception that if the CFS substantiates, the first thing done was to remove the child. It was the policy of the division to maintain unity of the family where possible. It was not about the possession of the drugs, but about the distribution and manufacturing. She said this was not about the person who had something in a drawer left over from ten years ago. It was about the person with 128 plants and a growing operation. According to Missoula's Sheriff's Department, 75% of these growing operations included illegal firearms. She wanted to clarify that she was a Montana member of the National Rifle

Association and not anti-gun. She wanted to get that out upfront. This was about illegal firearms. This was about individuals who booby trapped their site. They were manufacturing napalm, so that when their door was opened, a person unaware was hit with napalm. Growing 128 plants was not recreational use. It was a business. It was an inappropriate environment to raise children.

SEN. GRIMES asked if line 27 also included "or heard by a child." **Ms. Lipscomb** said yes.

SEN. GRIMES pointed out a section of the code that said "reasonable efforts to prevent removal" and in that section 41-3-423 there were exceptions such as aggravated assault against a child or chronic abuse or torture. The language appeared like that of SB 364. He wondered if that section of the law needed to be amended so that if a child had to be removed because of the circumstances described, those steps would be eliminated to prevent removal in severe cases. **Ms. Brown** said the lists in that particular provision were directly out of the Federal Adoption & Safe Families Act. It related to those circumstances where the social worker could go in and ask the court to make the determination. It was an all-inclusive list in the federal law. The feds said not to add anything else. **Ms. Brown** thought that with the production of meth, it could fit under investigative and mitigating circumstances in terms of children, such as exposure to a lot of toxicity when there was a meth lab present. It would be an aggravated circumstance and could be construed as a type of abuse. Generally it did fit more under the neglect piece.

SEN. GRIMES asked **Ms. Brown** if what she was saying was not to mess with it. **Ms. Brown** said yes.

SEN. GRIMES said what needed to be done was to verify in executive action that it was intended to be an aggravating circumstance. It would not mess the bill up, but lengthen it. He asked **Ms. Brown** if that would be necessary. **Ms. Brown** said no. She thought **SEN. COONEY'S** amended the definition of what abuse and neglect was. It did leave the social worker some flexibility. She thought that if what **SEN. GRIMES** suggested got incorporated into the bill, it might lessen the social worker's flexibility.

SEN. JERRY O'NEIL asked how many marijuana plants have to be growing before it was considered a criminal growth operation. **Mr. McGrath** said one. Growing or cultivating was a felony.

Closing by Sponsor:

SEN. MIKE COONEY said this was a growing problem. It had not dawned on him until he was on the campaign swings around the state. He said he would go to the small towns and visit with the law enforcement, they would start talking about the drug problems in their areas. They told him how much time they were having to spend dealing with it. They would tell him the problems they were having with methamphetamine and the dangers and toxicity and how ill prepared they were to deal with it. Then the kids were added to the equation, who could not defend themselves. He said there was the story about the child who put his peanut butter and jelly sandwich down on top of the table. This was where mom and dad just chopped up the meth or whatever drug it was, and there was a residue there. The child then consumed the sandwich, ended up in the hospital in a coma, and died. He said all the problems would not be solved with legislation. He said that Montana could begin by giving the tool to the state and law enforcement and to the Human Services individuals so that they could better deal with it. He hoped the committee would look seriously at this and thanked all the proponents that came to testify for helping him explain the issue.

SEN. GRIMES wanted to take executive action. He was concerned at the end of the week if several bills were not taken care of. **Mr. Bohyer** was not there, so not much could be done with any amendments. **SEN. GRIMES** said he did not think SB 364 would need one.

SEN. O'NEIL thought it needed an amendment regarding those with marijuana plants. There were parents with one or two plants but were not necessarily bad parents. Page 2, line 8, after "members," add "and others" before the semicolon.

Motion/Vote: **SEN. O'NEIL** moved that **SJ 18 BE AMENDED**. Motion carried 6-0. **SEN. ESP** and **SEN. DEPRATU** voted by proxy.

EXECUTIVE ACTION ON SJ 18

Motion/Vote: **SEN. HARRINGTON** moved that **SJ 18 DO PASS AS AMENDED**. Motion carried 6-0. **SEN. ESP** and **SEN. DEPRATU** voted by proxy.

SEN. GRIMES suggested deleting just Class V in title 50. That way if the marijuana plant was being grown for medicinal use than it would be questionable enough from the code. It was not in this bill. This bill, on page 2, line 20 referred to 45-9-132 that referred to the definition of drugs as in 50-32-232. Under that code it lists Schedule 1 through Schedule 5. Schedule 5

being anything for medicinal use or a drug that has low potential for abuse. If the people were a high profile, 100 plant manufacturer as described, but they only had one plant left, they would still be charged. If all they grew all along was one plant, it would make it sufficiently vague that it would not have to be worried about. If **SEN. O'NEIL** was okay with that, **SEN. GRIMES** recommended that the definition of Schedule 1 through Schedule 4 drugs and leave it up to **Dave Bohyer**, the drafter, to figure out how to do that.

Motion/Vote: **SEN. O'NEIL** moved that **SB 364 BE AMENDED**. Motion carried 6-0. **SEN. ESP** and **SEN. DEPRATU** voted by proxy.

EXECUTIVE ACTION ON SB 364

Motion/Vote: **SEN. BOHLINGER** moved that **SB 364 DO PASS AS AMENDED**. Motion carried 6-0. **SEN. ESP** and **SEN. DEPRATU** voted by proxy.

EXECUTIVE ACTION ON SJ 11

Motion/Vote: **SEN. GRIMES** moved that **SJ 11 DO PASS**. Motion carried 6-0. **SEN. ESP** and **SEN. DEPRATU** voted by proxy.

{Tape: 4; Side: A}

ADJOURNMENT

Adjournment: 6:10 P.M.

SEN. JERRY O'NEIL, Chairman

ANDREA GUSTAFSON, Secretary

JO/AG

EXHIBIT (phs35aad)